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MINING LAWS OF GERMANY (PRUSSIA)



BY

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MINING LAWS OF GERMANY (PRUSSIA)¹

By E. P. Youngman²

PREFATORY NOTE

This paper presents one of a series of digests of foreign mining legislation and court decisions that is being prepared in advance of a general report relative to the rights of American citizens to explore for minerals and to own and operate mines in various foreign countries. The facts concerning the mining legislation of Germany that are set forth in this paper are taken from the answers made by Dr. Fritz Oppenheimer to a questionnaire, dated September 10, 1928, submitted by the Bureau of Foreign and Domestic Commerce. Doctor Oppenheimer's report was transmitted by William T. Daugherty, American trade commissioner, Berlin, Germany.

INTRODUCTION

Although an effort has been made to standardize and codify the mining law to apply to the entire German Nation, nothing has yet been accomplished. This abstract, which applies only to Prussia, the largest and most important of the German States, is based upon the Prussian Mining Law (Preussisches Berggesetz) of June 24, 1865, which grants to certain provinces, communities, and districts special exceptions, of no particular significance, except locally.

CLASSIFICATION

From the standpoint of legislation, minerals may be placed in two classes. The first class, comprising potash and its associated salts (literally, potash-magnesia and boron salts and concurrent salts and brines) and coal and lignite in certain parts of Prussia, are State monopolies and may be prospected for, leased, or exploited only by special permission of the State. For this reason, the mining law applies practically only to minerals of the second group, which includes gold, silver, quicksilver, iron (except bog-iron ore), lead, copper, tin, zinc, cobalt, nickel, arsenic, manganese, antimony, sulphur, pyrites, (vitriol ores), alum, graphite, and rock salt.

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1. The Bureau of Mines will welcome the reprinting of this paper, provided the following footnote acknowledgment is used: "Reprinted from U. S. Bureau of Mines Information Circular 6271."
 2. Rare metals and nonmetals division:
 3. Berlin W 10, Regentenstrasse 2.

RIGHTS OF FOREIGNERS

Foreigners are permitted to explore for minerals and to own and operate mines in Germany. They shall, however, appoint legal representatives, who must apply to the Prussian Minister of State (whose consent is at his discretion) for permission "to acquire mining property, participation in immovable mining property, or independent exploitation rights." It is not necessary for a foreign company to incorporate under the laws of the country. Regulations concerning foreign labor do exist.

OWNERSHIP

The owner of the surface is also owner of the subsoil and is absolute owner of all minerals not specifically mentioned in the foregoing classification. However, he may not prevent prospecting on his land; and if he refuses to grant permission therefor, a Government agency is authorized to issue a license.

PROSPECTING

Permits.—Any one is privileged to acquire prospecting rights, as no conditions with respect to age, experience, or capital are imposed. The only restriction is that, in accordance with police regulations of the Superior Mining Office, a prospector may be compelled to report within a fixed period concerning the beginning and the termination of his prospecting. A prospector seeks a permit from the landowner; if he is refused, he then makes application to the Superior Mining Office (Oberbergamt), which must grant a license, and which fixes the compensation due to the landowner, in default of an agreement with him. (See Damages, p. 3.)

Area.—The right to prospect is not limited to any specified area. Prospecting may be done everywhere except on public reservations, streets, roads, railways, cemeteries, and other properties if, according to the decision of mining authorities, public interest demands such exceptions; it may not be done within 60 meters of buildings, gardens, and fenced-in farm property. (With respect to these exceptions, expressed permission of the owner is involved.)

Duration.—A permit is not limited in time, and a specified amount of work is not required to keep it in force. However, the owner must be compensated during the prospecting period, as has been indicated before.

CONCESSIONS

Whoever finds minerals in prospecting may apply to the Superior Mining Office for a grant of title to the mining property. The applicant must submit the mineral he has found as security. (evidence), although he is not compelled to prove that he has done a certain amount of prospecting.

The application for a concession sets forth the dimensions of the property sought, but the maximum area is 2,200,000 square meters. No extralateral rights exist. The mining grant has no time limit, but it terminates when the mine is exhausted or when the owner withdraws by legally established procedure through

the Superior Mining Office. Even the Government itself may not annul a mining grant. According to regulations of the Civil Law Book, re Land Estates (Bürgerliches Gesetzbuch über Grundstücke), mining property may be transferred, or interest therein may be acquired.

DAMAGES

Fees due to the landowner^{depend} upon the extent of the loss sustained by him; if the value of the property is lowered through prospecting, the owner must be fully compensated. In default of an agreement between the owner and the permit holder, the amount of the compensation shall be fixed by the Superior Mining Office, from whose decision appeal may be made, of course, to the courts.

TAXES

Taxes and administrative fees, under special legal regulations, must be paid for the privilege of operating a mine.

AUTHORITY AND JURISDICTION

The Superior Mining Office (Oberbergamt) is the chief mining authority; as previously stated, it must give a substitute permit whenever a landowner refuses to grant prospecting rights, provided, of course, that the minerals to be prospected for are grantable, and provided that they are not on reserved property (see p. 2). The office may not use its discretion to refuse either the prospecting permit or the mining right if all legal prerequisites have been met.

MISCELLANEOUS

Special regulations cover mining labor (length of shifts, limitation of foreign and child labor), accident protection and insurance, workmen's insurance, export taxes, and like matters.